

# **WISCONSIN LEGISLATIVE COUNCIL STAFF**

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 98-018**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **1. Statutory Authority**

The applicability of the “bad actor” provision is determined in s. 289.34, Stats. This statute applies to a “solid waste disposal facility.” The proposed rule, in s. NR 500.06 (5) applies to “landfills” which, as defined in s. NR 500.03 (120), means land disposal facilities, but excludes land spreading facilities or surface impoundment facilities. Based on the statutory definitions of “solid waste disposal” and “solid waste facility,” it is reasonably clear that the statute was meant to apply to all types of solid waste disposal facilities, not just those defined as “landfills” in the rules.

#### **2. Form, Style and Placement in Administrative Code**

a. The proposed rule creates s. NR 500.06 (5) and (6). Current s. NR 500.06 contains introductory material and four subsections. The two new subsections do not relate to the introductory material and do not appear to be related to the subject matter of s. NR 500.06. Also, s. NR 500.06 (intro.) applies to initial licensing or relicensing, and s. NR 500.06 (5) applies only to initial licensing.

b. The amendment in s. NR 504.09 (1) (e) should be accomplished by striking “spillway” and substituting an underlined “spillways,” rather than adding an underlined “s”.

c. The new material in s. NR 680.45 (1) (a) should be inserted after the deleted material. Also, the sequence of the rule should amend this paragraph before creating s. NR 680.45 (4) (b).

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

- a. The last cross-reference in s. NR 680.45 (1) (a) should be to “sub. (4) (b).”
- b. The rule does not acknowledge the effect of s. 227.51 (2), Stats., which provides that if a licensee has “made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally acted upon by the agency . . . .” The department should consider how this statute relates to s. 299.05, Stats., for each of these situations: licenses that are renewed without change, licenses that are renewed with new conditions imposed and licenses that are denied.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

- a. The word “such” should not be used before “persons” in s. NR 500.06 (5) (b). Also, “own” should be used in that paragraph instead of “owns.” (See, also, other provisions of the rule that include this same sentence.)
- b. In the Note after s. NR 500.06 (5) and other similar notes in the rule, “would be” should be replaced by “is.”
- c. The time limit for issuing a solid waste facility license under s. NR 500.06 (6) is 45 business days, but the time limit for issuing a hazardous waste facility license under s. NR 620.15 (1) (d) is 65 business days. The procedures for issuance of these licenses are substantially similar. Is this difference in the time limits intended?
- d. The rule includes provisions to implement the permit guarantee program under s. 299.05, Stats. However, s. NR 500.06 (6) applies to the “application for a license,” and does not mention renewals, while ss. NR 620.15 (1) (d) and 680.45 (4) (b) apply to the renewal of a hazardous waste facility license. Section NR 500.06 (6) should explicitly state that it applies to renewals, if this is the department’s intent.